17-294 ~~444~~ Reversed Clifford Dissenting Judge Davis — Affirmed by a divided Court — Submitted — Reargued ~~April~~ Feb 12, 73

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~334.~~ ~~122~~ 15

WILLIAM H. BARNES, JAMES N. KERNS, AND ALBERT L. MAGILTON, PLAINTIFFS IN ERROR,

vs.

THE PHILADELPHIA AND READING RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED DECEMBER 6, 1870.

Dec 7, 1872

SUPREME COURT OF THE UNITED STATES.

No. 334.

WILLIAM H. BARNES, JAMES N. KERNS, AND ALBERT L. MAGILTON, PLAINTIFFS IN ERROR,

vs.

THE PHILADELPHIA AND READING RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit of April sessions, 1870, No. 22.

It is thus contained:

Be it remembered that, on the ninth day of May, in the year of our Lord one thousand eight hundred and seventy, John K. Valentine, esquire, assistant district attorney of the United States for the eastern district of Pennsylvania, comes into court here and presents the petition of William H. Barnes, James N. Kerns, and Albert L. Magilton, for the removal of the cause from the supreme court of Pennsylvania for the eastern district; which said petition, being filed, is in the
2 words and of the tenor following, to wit:

To the honorable the circuit court of the United States for the eastern district of Pennsylvania in the third circuit:

Your petitioners, William H. Barnes, James N. Kerns, and Albert L. Magilton, respectfully represent that suit has been commenced against them by The Philadelphia and Reading Railroad Company, in the supreme court of Pennsylvania, in and for the eastern district, of July term, 1870, No. 72, summons, trespass vi et armis.

That your petitioners are officers of the United States, appointed under and acting by authority of the act of Congress, entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," passed June 30th, 1864, and acts in addition thereto and in amendment thereof, to wit, the said
3 William H. Barnes, collector of internal revenue for the first district for assessing and collecting taxes in the State of Pennsylvania, and the said James N. Kerns and Albert L. Magilton, deputy collectors of the said first district. That the said suit has been brought against your said petitioners on account of an act done by them under color of their said offices as said collector and deputy collectors, to wit, on account of a distraint made by them, the said William H. Barnes, James N. Kerns, and Albert L. Magilton, in their said official capacities for the purpose of collecting a tax claimed by the United States from the said plaintiffs and duly assessed against them.

Your petitioners therefore pray that the cause may be entered on the docket of your honorable court and proceeded in as in a cause originally commenced therein, and that a writ of certiorari be imme-
4 diately issued by the clerk of your honorable court to the prothonotary of the supreme court of the State of Pennsylvania aforesaid, requiring the said supreme court to send to the said circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, the record and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided. And they will ever pray, &c.

JAMES N. KERNS.
A. L. MAGILTON.

William H. Barnes, one of the above-named petitioners, being duly sworn according to law, says that the facts set forth in the above petition are true, to the best of his knowledge and belief.

Sworn and subscribed before me this day of May, 1870.

James N. Kerns, one of the above-named petitioners, being duly sworn according to law, says that the facts set forth in the above petition are true, to the best of his knowledge and belief.

JAMES N. KERNS.

Sworn and subscribed before me this 9th day of May, 1870.

W. GRIER HIBLER,
U. S. Commissioner.

Albert L. Magilton, one of the above-named petitioners, being duly sworn according to law, says that the facts set forth in the above petition are true, to the best of his knowledge and belief.

A. L. MAGILTON.

Sworn and subscribed before me this 9th day of May, 1870.

W. GRIER HIBLER,
U. S. Commissioner.

I hereby certify that, as counsel for said petitioners, William H. Barnes, James N. Kerns, and Albert L. Magilton, I have examined the proceedings against them and carefully enquired into all the matters set forth in the foregoing petition, and that I believe the same to be true.

AUBREY H. SMITH,
U. S. Attorney.

Which said petition having been filed, it was ordered by the court here that a writ of certiorari do immediately issue, directed to the supreme court of Pennsylvania; which said writ was in the words following, to wit:

The President of the United States to the honorable the judges of the supreme court of Pennsylvania, for the eastern district, greeting:

Whereas lately in your said supreme court of Pennsylvania, for the eastern district, suit was brought against William H. Barnes, James N. Kerns, and Albert L. Magilton, by The Philadelphia and Reading Railroad Company, in a plea of trespass vi et armis, (No. 72, of July term, 1870,) which said plea, as it is said, is still pending before you in the said supreme court of Pennsylvania, undetermined; and whereas on the application of the said William H. Barnes, James N. Kerns, and Albert L. Magilton, to the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, on a suggestion, supported by proper evidence, that the said suit was brought on account of acts done by them under and acting by authority of the act of Congress entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," passed June 30th, 1864, and acts in addition thereto and in amendment thereof, to wit, the said William H. Barnes, collector of internal revenue for the first district for assessing and collecting taxes in the State of Pennsylvania, and the said James N. Kerns and Albert L. Magilton, deputy collectors of said first district, to wit, on account of a distraint made by them, the said William H. Barnes, James N. Kerns, and Albert L. Magilton, in their said official capacities for the purpose of collecting a tax claimed by the United States from the said The Philadelphia and Reading Railroad Company and duly assessed against them. They therefore respectfully

pray that a writ of certiorari may be immediately issued by the clerk of the said court of the United States to the said supreme court of Pennsylvania, requiring them to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided.

Wherefore, you are hereby required to transmit, under your seal,
9 the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and to do what shall appear of right ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this ninth day of May, A. D. 1870, and in the ninety-fourth year of the independence of the United States.

[SEAL.] SAMUEL BELL,
Clerk C. C. U. S.

10 And afterwards, to wit, on the seventeenth day of May, A. D. 1870, the said writ of certiorari was returned into the said circuit court of the United States with the record and proceedings of the said supreme court of Pennsylvania annexed; which said return and record being read, are as follows, to wit:

A certified copy of the record and proceedings in the case herein mentioned is herewith transmitted to the circuit court of the United States, as herein required.

Attest:

JAMES ROSS SNOWDEN,
Prothonotary.

In the supreme court of Pennsylvania, for the eastern district.

THE PHILADELPHIA AND READING RAILroad Company
vs.
11 WILLIAM H. BARNES, JAMES M. KERNS, AND Albert L. Magilton.

Issue summons, trespass vi et armis, to first Monday of June, 1870.

May 5, 1870.

JA'S E. GOWEN.

PROTH'Y S. C.

(Endorsement:) No. 72. July term, 1870. The Phila. & Reading R. R. Co. vs. Barnes et al. S. C. Præcipe summons, trespass. Filed May 5, 1870. Ja's E. Gowen.

12 EASTERN DISTRICT OF PENNSYLVANIA,
City and County of Philadelphia, ss:

SEAL.] The Commonwealth of Pennsylvania to the sheriff of Philadelphia County, greeting:

We command you that you summon William H. Barnes, James M.

Kerns, and Albert L. Magilton, late of your county, so that they be and appear before the justices of our supreme court at our same court, to be holden at Philadelphia, in and for the eastern district of Pennsylvania, on the first Monday of June next, to answer The Philadelphia and Reading Railroad Company of a plea of trespass vi et armis, and have you then there this writ.

Witness the Hon. James Thompson, doctor of laws, chief justice of our said supreme court, at Philadelphia, the fifth day of May, in the year of our Lord one thousand eight hundred and seventy.

JAMES ROSS SNOWDEN,
Prothonotary.

13 (Indorsed:) No. 72. July term, 1870. Supreme court. The Philad'a & Reading R. R. Co. vs. W'm H. Barnes et al. Summons. Returnable the first Monday of June, 1870. Ja's E. Gowen.

We accept service of the within writ.

W'M H. BARNES,
Per A. L. MAGILTON.
JAMES N. KERNS,
Dep. Collector.
A. L. MAGILTON.

Philadelphia, May 6, 1870.

14 *Docket entries.—Appearance docket.—July term*, 1870. *No.* 72.

J. E. Gowen.

THE PHILADELPHIA AND READING RAILROAD COMPANY
vs.
WILLIAM H. BARNES, JAMES M. KERNS, AND Albert L. Magilton. } 72.

Summons, trespass vi et armis, ret'ble first Monday of June, 1870. Exit May 5, 1870.

Service accepted by defendants.

I certify the above and foregoing to a true copy of the whole record, docket entries, and proceedings in the above case.

In witness whereof I have hereunto set my hand and affixed the seal of the said supreme court, at Philadelphia, this twelfth day of May, A. D. 1870.

[SEAL.] JAMES ROSS SNOWDEN,
Prothonotary.

15 And afterwards, to wit, on the nineteenth day of May, in the year last aforesaid, the said plaintiffs, The Philadelphia and Reading Railroad Company, by James E. Gowen, esquire, their attorney, come into court here and file their declaration; which being read, is as follows, to wit:

Declaration.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

William H. Barnes, James N. Kerns, and Albert L. Magilton, defendants, were attached to answer The Philadelphia and Reading Rail-

road Company, plaintiffs, of a plea of trespass; and thereupon the said plaintiffs, by James E. Gowen, their attorney, complain against the said defendants for that the said defendants, on the 5th day of May, 1870, with force and arms, &c., seized, took, and destrained certain goods and chattels, to wit, the desks, chairs, tables, and other personal property of the said plaintiffs, being at and in their building situate at the corner of Fourth street and Willing's alley, in the city of Philadelphia, of great value, to wit, of the value of three thousand dollars, to wit, at the county of Philadelphia aforesaid, and then and there kept and detained the same, so seized and distrained, for a long space of time, to wit, for the space of one day then next following, whereby the said plaintiffs, for and during all that time, lost, and were deprived of, the use of the said goods and chattels, and thereby the same then and there became and were greatly damaged, lessened in value, and spoiled, to wit, at the county aforesaid, and other wrongs to the said plaintiffs then and there did, to the great damage of the said plaintiffs and against the peace of the Commonwealth of Pennsylvania. Wherefore the said plaintiffs say that they are injured, and have sustained damage to the amount of three thousand dollars, and therefore they bring suit, &c.

JAMES E. GOWEN,
For Plaintiffs.

MAY 19TH, 1870.

16 And afterwards, to wit, on the first day of June, in the year aforesaid, the said defendants, William H. Barnes, James N. Kerns, and Albert L. Magilton, by Aubrey H. Smith, esquire, their attorney, come into court and file pleas, which said pleas are as follows, to wit:

Pleas.

First plea. And the said defendants, by Aubrey H. Smith, their attorney, come and defend the force and injury when, &c., and say that they are not, nor is any or either of them, guilty of the said supposed trespasses above laid to their charge, or any or either of them, or any part thereof, in manner and form as the said plaintiffs have above complained against them; and of this the said defendants put themselves upon the country, &c.

Second plea. And for a further plea in this behalf, the said defendants, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them, because they say that the said plaintiffs are a railroad company, duly incorporated under and in pursuance of the laws of Pennsylvania; and that by the law incorporating the said company it was provided that dividends of so much of the profits thereof as should appear advisable to the managers should be declared at least twice a year in every year, and should be paid to the stockholders at any time after the expiration of ten days therefrom; and the said company did, on the 22d day of December, 1869, declare a dividend, in money, amounting to the sum of one million five hundred and twenty-seven thousand five hundred and thirty-one dollars and fifty-nine cents ($1,527,531 59) on their capital stock, as part of their earnings, profits, incomes, and gains made and accrued between the 1st day of July, 1869, and the 1st day of December, 1869; which dividend was declared as payable to the stockholders of the said company on and after the 17th day of January, 1870.

And the defendants further say that a return thereof was after-

wards, and a long time before the said time, when, &c., duly made by the said plaintiffs to the assessor of the internal revenue of the United States for the first collection district of Pennsylvania, and a tax of five per centum upon the amount of the said dividend, to wit, the sum of seventy-six thousand three hundred and seventy-six dollars and fifty-
17 eight cents, ($76,376 58,) was assessed by him upon the said plaintiffs; which said tax was due and payable by the plaintiffs to the United States on or before the last day of March, 1870.

And the said defendants further say that the said William H. Barnes, long before, and at the time when, &c., was the collector of the internal revenue of the United States for the first collection district of Pennsylvania; and the said James N. Kerns and Albert L. Magilton at the same time were deputy collectors thereof for the same district.

And that the said William H. Barnes, being the collector of the internal revenue of the United States for the said district as aforesaid, did duly notify the said plaintiffs that the said tax so assessed against them was due and payable on or before the said last day of March, 1870, as aforesaid; and that unless the same should be paid on or before that day, it would become his duty to collect the same, together with a penalty of five per centum additional thereto, and interest at the rate of one per centum per month from the time when the said tax was due and payable.

And the said defendants further say that the said tax was not paid by the said plaintiffs to the said William H. Barnes, collector as aforesaid, on or before the said last day of March, 1870; whereupon afterwards, and long before the time when, &c., to wit, on the 21st day of April, 1870, he, the said William H. Barnes, collector as aforesaid, did, in due form, demand payment thereof by the said plaintiffs, together with five per centum additional thereto, and such interest as might accrue before payment; and did further notify the said plaintiffs that if the said tax, penalty, and interest should not be paid within ten days from the making of the said demand, he would make distraint therefor as provided by law.

And the said defendants further say that, notwithstanding the said notice and demand, the said tax, together with the five per centum additional thereto, and the interest accrued thereupon as aforesaid, was, on the aforesaid 5th day of May, 1870, and at the said time when, &c., yet wholly due and unpaid by the said plaintiffs; wherefore the said William H. Barnes, collector as aforesaid, and the said James N. Kerns and Albert L. Magilton, deputy collectors as aforesaid, by his command on the said day when, &c., did enter into and upon the said building of the said plaintiffs, situate at the corner of Fourth street and Willing's alley, in the city of Philadelphia, in which, &c., and did then and there seize, take, and distrain the said goods and chattels in the said declaration mentioned, as and for a distress for the said tax, and together with the five per centum additional thereto, and the interest accrued therefrom as aforesaid, and took and seized the same thereon as such distress as aforesaid, on the most fit and convenient part thereof for that purpose, according to the form of the statute in such case made and provided, which are the same supposed trespasses in the introductory part of this plea mentioned; and this the said defendants are ready to verify, &c. Wherefore they pray judgment if the said plaintiffs ought to have and maintain their aforesaid action thereof against them, &c.

(Signed) AUBREY H. SMITH,
For Defendants.

17½ And afterwards, to wit, on the same day, the plaintiffs by their attorney aforesaid, come into court here and file their replication and demurrer, as follows:

Replication and demurrer.

And the said plaintiffs, as to the plea of the said defendants first above pleaded, and whereof they have put themselves upon the country, do the like.

And the said plaintiffs, as to the plea of the said defendants secondly above pleaded, say that the same, and the matters therein contained, in manner and form as the same are pleaded, are not sufficient in law to bar the plaintiffs from having or maintaining their aforesaid action against the said defendants, and that they are not bound by law to answer the same; and this they are ready to verify. Wherefore, for want of a sufficient plea in this behalf, the plaintiffs pray judgment, &c.

JAMES E. GOWEN,
For Plaintiffs.

And afterwards, to wit, on the same day, the defendants, by their said attorney join in demurrer; and the said joinder in demurrer being read and filed is as follows, to wit:

18 *Joinder in demurrer.*

And the said defendants say that the said plea and the matters therein contained, in manner and form as the same are pleaded, are sufficient in law to bar the plaintiffs from having or maintaining their aforesaid action against the said defendants; and this the said defendants are ready to verify. Wherefore, as the said plaintiffs have not answered the said plea, nor hitherto in any manner denied the same, the said defendants pray judgment, &c.

AUBREY H. SMITH,
For Defendants.

And afterwards, to wit, on the first day of July, in the year aforesaid, the said defendants by Aubrey H. Smith, esquire, their attorney, leave of the court being first had and obtained, withdraw their said plea of not guilty.

19 And afterwards, to wit, on the nineteenth day of September, in the year last aforesaid, come the parties aforesaid by their attorneys aforesaid, upon which the record and matters aforesaid having been seen and by the court now here fully understood, and all and singular the premises having been examined and mature deliberation being had thereupon, for that it seems to the court that the demurrer aforesaid is not sufficient in law, and that the plaintiffs aforesaid ought to have and maintain their said action against the said defendants, as the said plaintiffs have above alleged, by reason whereof the said plaintiffs ought to recover from the said defendants their damages by occasion of the premises; but because it is unknown to our said court here what damages the said plaintiffs have sustained in the premises as for their costs and charges by them about their suit in this behalf expended, the marshal is commanded that, by the oaths and
19½ affirmations of twelve honest and lawful men of his district, he diligently enquire what damages the aforesaid plaintiffs have sustain-

ed, as well by the occasion of the premises aforesaid, as for their costs and charges by them about their said suit in this behalf expended.

20 And afterwards, to wit, on the seventeenth day of October, in the year aforesaid, because it is unknown what damages the plaintiffs have sustained, they, by their attorney aforesaid, sue forth out of the said court here, a writ of inquiry of damages; which said writ being issued, is in the words and figures following, to wit:

UNITED STATES,
Eastern District of Pennsylvania, sct:

The President of the United States, to the marshal of the eastern district of Pennsylvania, greeting:

Whereas William H. Barnes, James N. Kerns, and Albert L. Magilton, defendants, were attached to answer The Philadelphia and Reading Railroad Company, plaintiffs, of a plea of trespass, and thereupon the said plaintiffs, by James E. Gowen, their attorney,
21 complain against the said defendants, for that the said defendants, on the 5th day of May, 1870, with force and arms, &c., seized, took, and distrained certain goods and chattels, to wit, the desks, chairs, tables, and other personal property of the said plaintiffs, being at and in their building, situate at the corner of Fourth street and Willing's alley in the city of Philadelphia, of great value, to wit, of the value of three thousand dollars, to wit, at the county of Philadelphia aforesaid; and then and there kept and detained the same, so seized and distrained, for a long space of time, to wit, for the space of one day then next following, whereby the said plaintiffs, for and during all that time, lost, and were deprived of, the use of said goods and chattels, and thereby the same then and there became and were greatly damaged, lessened in value, and spoiled, to wit, at the county aforesaid; and
22 other wrongs to the said plaintiffs then and there did, to the great damage of the said plaintiffs, and against the peace of the Commonwealth of Pennsylvania; wherefore the said plaintiffs say that they are injured, and have sustained damage to the amount of three thousand dollars. And therefore they bring suit, &c.

And it was in such manner proceeded in our said court, that the said plaintiffs ought to recover their damages against the said defendants which they sustained by reason of the premises; but because it is unknown what damages the said plaintiffs have sustained by the occasion thereof, we command you, that by the oath or solemn affirmations of twelve honest and lawful men of your district, you diligently inquire what damages the said plaintiffs have sustained, as well by
23 occasion of the premises as for their costs and charges by them about their suit in that behalf expended. And the inquisition that you shall take thereof, make manifest before our judges at Philadelphia, at a circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, at Philadelphia, there to be held the first Monday of November next, under your seal and the seals of those by whose oaths or affirmations respectively you shall make that inquisition. And have you then there the names of those by whom you shall make that inquisition, and this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, the seventeenth day of October, A. D. one thousand eight hundred and seventy.

[SEAL.] SAMUEL BELL,
Clerk Circuit C't U. S.

24 And afterwards to wit, on the seventh day of November, in the year of our Lord last aforesaid, come into our said court here the parties aforesaid, by their attorneys aforesaid, and Edgar M. Gregory, the marshal for the said eastern district of Pennsylvania, by virtue of the writ to him directed, returned here a certain inquisition; which being read is as follows, to wit:

Inquisition indented and taken at Philadelphia, in the county of Philadelphia, eastern district of Pennsylvania, the nineteenth day of October, A. D. 1870, before Edgar M. Gregory, marshal of the district aforesaid, by virtue of a writ to him directed, and to this inquisition annexed, to inquire of certain matters in the same writ mentioned and contained by the oaths of Henry Davis, James Cremer, John Manderson, Harrison G. Clark, Amos Bateman, Mahlon H. Dickinson, Henry H. Reed, Justus A. Gregory, and the solemn affirmations of Mark T. Willis, Joseph T. Bailey, John C. Gerrish, Blackford C. Worthington, twelve honest and lawful men of the district afore-
25 said, who, upon their oath and affirmation aforesaid, respectively do say, that the Philadelphia and Reading Railroad Company, in the said writ named, have sustained damages by occasion of the premises in the same writ specified to fifty dollars, and for their costs and charges by them in and about their suit in that behalf expended, eighty-seven dollars and fifty-seven cents.

And thereupon, forasmuch as the court now here is not as yet advised about giving judgment of and upon the premises, day is there fore given to the said parties to be before the court in four days, to wit, on the eleventh day of November, in the year aforesaid, for hearing judgment of and upon the premises, because the said court here is not yet advised thereupon. At which said day, before our said court come the said The Philadelphia and Reading Railroad Company by their attorney, aforesaid, whereupon the premises being seen and fully understood by the court here, and mature deliberation being had there-
26 on, it is considered that the said The Philadelphia and Reading Railroad Company do recover from the said William H. Barnes, James N. Kerns and Albert L. Magilton their damages aforesaid by the inquisition in form aforesaid found, and also eighty-seven dollars and fifty-seven cents adjudged to the said The Philadelphia and Reading Railroad Company, by the court, now here, at their request, for increase of their said costs and charges, which said damages in the whole amount to the sum of one hundred and thirty-seven dollars and fifty-seven cents. And the said defendants in mercy, &c.

And, afterwards, to wit, on the fifteenth day of November, A. D. 1870, come the said defendants, by Aubrey H. Smith, esquire, their attorney, and file their assignments of error; which, being read, are as follows, to wit:

Afterwards to wit, on the first Monday of December, in this same
27 term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said plaintiffs in error, by Aubrey H. Smith, their attorney, and say that, in the record and proceedings aforesaid, there is manifest error in this, to wit, that, by the record aforesaid, it appears that the judgment aforesaid given was given for the said defendants in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been

given for the said plaintiffs in error against the said defendants in error; and the said plaintiffs in error pray that the judgment aforesaid may be reversed, annulled, and altogether held for nothing and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

AUBREY H. SMITH,
Att'y for Pl'ffs in Error.

28 UNITED STATES OF AMERICA, *ss:*

To The Philadelphia and Reading Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, wherein William H. Barnes, James N. Kerns, and Albert L. Magilton, are plaintiffs, and you, the said The Philadelphia and Reading Railroad Company, are defendants in error, to show cause, if any there may be, why judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 24th day of November, A. D. 1870.

W. STRONG,
One of the Justices of the Supreme Court U. S.

Service accepted for def'ts.

J. E. GOWEN.

Nov. 25, 1870.

29 UNITED STATES,
Eastern District of Pennsylvania, sct.:

[SEAL.] The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between The Philadelphia and Reading Railroad Company, plaintiffs, and William H. Barnes, James N. Kerns, and Albert L. Magilton, defendants, in a plea of trespass vi et armis, a manifest error has entervened to the great damage of the said defendants, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the justices of the Supreme Court of the United States, at a court to be holden at Washington, on the first Monday of December, that the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the Honourable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fifteenth day of November, A. D. one thousand eight hundred and seventy, and in ninety-fifth year of the independence of the said United States.

W. GRIER HIBLER,
Pro. Clerk Circuit C't U. S.

Allowed by—

W. STRONG,
One of the Justices of the Supreme Court U. S.

30 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

I, Samuel Bell, clerk, do certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending between The Philadelphia and Reading Railroad Company, plaintiffs, and William H. Barnes, James N. Kerns, and Albert L. Magilton, defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this twenty-ninth day of November, A. D. 1870, and in the ninety-fifth year of the independence of the said United States.

[SEAL.]

SAMUEL BELL,
Clerk C. C. U. S. E. D. of Pa.

(Indorsement on cover:) No. 334. William H. Barnes, James N. Kerns, and Albert L. Magilton, plaintiffs in error, vs. The Philadelphia and Reading Railroad Company. E. Pennsylvania C. C. U. S. Filed 6th December, 1870.